

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KATHERINE FLEMING, EDWARD R.
HADUCK, and VICTORIA WENDEL,

Plaintiffs,

v.

FIDELITY MANAGEMENT TRUST
COMPANY, FIDELITY INVESTMENTS
INSTITUTIONAL OPERATIONS
COMPANY, INC.,

Defendants.

Civil Action No. 16-10918-ADB

Oral Argument Requested

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'
COMPLAINT UNDER FED. R. CIV. P. 12(b)(6)**

Defendants Fidelity Management Trust Company and Fidelity Investments Institutional Operations Company (collectively, "Fidelity") hereby move to dismiss the Complaint filed by Plaintiffs Katherine Fleming, Edward R. Haduck, and Victoria Wendel ("Plaintiffs"). For the reasons stated in the accompanying Memorandum in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint Under Fed. R. Civ. P. 12(b)(6), the Complaint should be dismissed entirely because (i) Plaintiffs fail to state breach of fiduciary duty claims against Fidelity concerning its compensation in connection with Plaintiffs' 401(k) plan's use of Financial Engines or BrokerageLink because Fidelity is not an ERISA fiduciary with respect to those plan features; (ii) Plaintiffs' claims concerning Financial Engines fail because they are based on a demonstrably false factual premise; and (iii) Plaintiffs fail to plead a prohibited transaction under ERISA.

WHEREFORE, Fidelity respectfully requests dismissal of the Complaint, with prejudice.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Fidelity requests oral argument on this Motion. Fidelity respectfully submits that a hearing will assist the Court in its consideration and resolution of the issues presented herein.

Dated: July 22, 2016

/s/ James R. Carroll
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Respectfully Submitted,

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LOCAL RULE 7.1(A)(2) CERTIFICATION
AND CERTIFICATE OF SERVICE

Pursuant to Local Rule 7.1(a)(2), I, Alison V. Douglass, hereby certify that counsel for Defendants conferred with opposing counsel on Monday, July 18, 2016, and were unable to resolve or narrow the issues presented in this motion prior to filing.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on July 22, 2016.

/s/ Alison V. Douglass